

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

“All Cases”

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**PHARMACY DEFENDANTS RESPONSE TO PEC’S EMERGENCY MOTION FOR
LEAVE TO TAKE TRIAL PRESERVATION DEPOSITION OF DAVID KESSLER**

To date, Dr. Kessler has offered no opinions against Pharmacy Defendants.¹ Any trial preservation deposition, if the Court were to allow one, therefore may not include any such opinions. Rule 26(a)(2) mandates that the Pharmacy Defendants are entitled in advance to written disclosure of any expert opinions against them and an opportunity for a discovery deposition in advance of any trial preservation deposition. It is not possible for such discovery to be accomplished in the next week and, therefore, Dr. Kessler should not be permitted to provide any opinions against the Pharmacy Defendants.

¹ Pharmacy Defendants include CVS Pharmacy, Inc., CVS Rx Services, Inc., Ohio CVS Stores, L.L.C., CVS Indiana, L.L.C., Giant Eagle/HBC Service Co., Rite Aid of Maryland, Walgreens Boots Alliance, Inc., Walgreen Co., Walgreen Eastern Co., and Walmart Inc.

Date: January 8, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 8, 2021, the foregoing was filed using the Court's CM/ECF filing system and will be served via the Court's CM/ECF filing system on all attorneys of record.

/s/ Eric R. Delinsky
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